

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Sea Planes, Incorporated (VCC-85) for approval of the expansion of its Certificate of Public Convenience and Necessity to include non-scheduled service to and from all navigable harbors and coves on Catalina Island to and from Marina Del Rey, Avalon and Two Harbors, all of which points are either along existing authorized routes or within a mile or two.

Application 05-06-026
(Filed June 9, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUIRING FURTHER RESPONSES BY BOTH PARTIES**

1. Summary

This ruling requires applicant Sea Planes, Incorporated (Sea Planes) and protestor Pacific Adventure Cruises, Inc. (Pacific Adventure) to file additional information as set forth herein and to state whether they will participate in a Commission-sponsored mediation of this dispute.

2. Background

Sea Planes seeks expansion of its common carrier authority to include non-scheduled passenger ferry service to and from all navigable harbors and coves on Santa Catalina Island (Catalina) to and from Marina Del Rey on the California mainland. Sea Planes now operates scheduled ferry service between Marina Del Rey and the City of Avalon (Avalon) and the Two Harbors area (Two Harbors) pursuant to Decision (D.) 01-09-042 and D.04-08-034. The application is protested by Pacific Adventure, which operates non-scheduled service between

Marina Del Rey and Avalon, Two Harbors and all accessible ports on Catalina and scheduled service between all accessible ports on Catalina and all accessible docks in Marina Del Rey.

Sea Planes states that it has contracted for a \$3.6 million 149-passenger catamaran ferry to provide the new service and, until its delivery, Sea Planes has leased a high-speed 149-passenger hydrofoil ferry. Sea Planes states that it is the only scheduled Catalina passenger ferry operator without authority to also operate non-scheduled service to and from all points on Catalina. It adds that it will not be in competition with Pacific Adventure, which was authorized in D.97-06-043 to operate non-scheduled on-call service from Marina Del Ray because Pacific Adventure's vessels are smaller than those of Sea Planes and its service appeals to a different clientele.

In its protest to the application, Pacific Adventure asserts that the proposed expanded service would in fact compete with existing service provided both by Pacific Adventure and Catalina Channel Express. Pacific Adventure requests an evidentiary hearing on this application and states that, at hearing, it will show that Sea Planes does not serve public convenience and necessity, lacks financial and operational fitness and has a history of misrepresentations before the Commission.

3. Further Responses

This ruling directs Sea Planes and Pacific Adventure to respond in writing to questions posed by the pleadings. Responses are due within 30 days of the date of this ruling.

3.1 Questions for Sea Planes

Sea Planes is directed to respond to the following questions:

1. Please respond to the Pacific Adventure allegation that Sea Planes “has consistently engaged in a repeated pattern of schedule changes, without any notice to the public or even its own customers.” (Protest, at p. 3.)
2. Please respond to the Pacific Adventure allegation that “Sea Planes frequently cancels scheduled trips without any notice to the public or its ticket holders.” (Protest, at p. 3.)
3. Please respond to the Pacific Adventure allegation that Sea Planes “sold tickets for a Mother Day [2005] Weekend despite the fact that they did not have an operational boat.” (Protest, at p. 4.)
4. Please respond to the Pacific Adventure allegation that Sea Planes operated from August 2003 through November 2003, ceased operations from November 1, 2003 through May 2004, operated from May 2004 through November 2004, and ceased all service from November 2004 through May 26, 2005. (Protest, at p. 4.)
5. Please respond to the Pacific Adventure allegation that the boat currently used by Sea Planes is defective and, allegedly because of this, caused injuries to passengers on June 3, 2005, and on July 2, 2005. (Protest, at p. 5.)
6. Please respond to the Pacific Adventure allegation that Sea Planes in previous applications represented that new vessels were to be put into service when in fact they were not put into service. (Protest, at pp. 5-6.)
7. Please respond to the Pacific Adventure allegation that Sea Planes is unable to demonstrate financial fitness. (Protest, at pp. 6-7.)

3.2 Questions for Pacific Adventure

Pacific Adventure is directed to respond to the following questions:

1. Please state whether you agree that, except for Sea Planes, all authorizations issued to operators of ferries to Catalina include any and all points on the island on a scheduled and non-scheduled basis. (Application, at p. 3-5.)
2. Please state whether Pacific Adventure operations from Marina Del Rey are limited to a 45-foot vessel, "The Miss Christi," and an older 65-foot vessel, "The Shoreliner." (Application, at p. 5.)
3. Please comment on the Sea Planes allegation that Pacific Adventure in 2004 "abandoned a group of campers on Catalina because their vessel could not make the afternoon crossing to pick them up." (Application, at p. 6.)
4. Please state whether you agree that granting the Sea Planes application would encourage competition in a manner favored by the Commission. (Application, at p. 6.)

3.3 Mediation Question for Both Parties

Both Sea Planes and Pacific Adventure are directed to respond to the following question:

The Commission conducts a mediation service in which parties are invited to select one of three mediation-trained Administrative Law Judges (from a list that will be supplied to you) to conduct one or two days of mediation to determine whether the parties can resolve their differences without the need of an evidentiary hearing. Positions of the parties and representations made at mediation are confidential. If mediation succeeds, the application may be decided without hearing. If mediation fails, the parties may proceed to evidentiary hearing. Do you agree that mediation is warranted in this case and do you want to take part in mediation?

IT IS RULED that Sea Planes, Incorporated, and Pacific Adventure Cruises, Inc., are directed to respond to the questions directed to them in this ruling and to file their responses, with a copy to the undersigned Administrative Law Judge, within 30 days of the date of this ruling.

Dated August 9, 2005, at San Francisco, California.

/s/ GLEN WALKER

Glen Walker

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requiring Further Responses by Both Parties on all parties of record in this proceeding or their attorneys of record.

Dated August 9, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.